Griffith v. *Holman*, 23 Wash. 347, 63 Pac. 239. The principal case appears to accept the doctrine that fishing rights are dependent upon the public character of the waters, regardless of the ownership of the subaqueous soil, although it emphasizes the more narrow procedural ground that trover will not lie, as title to the mussels is vested in the state.

BOOK REVIEWS

JURIDICAL REFORM. A Critical Comparison of Pleading and Practice under the Common Law and Equity Systems of Practice, the English Judicature Acts and Codes of the Several States of this Country, with a View to Greater Efficiency and Economy. By John D. Works. New York: The Neale Publishing Company. 1919. pp. 199.

Fifty years at the bar and on the bench may serve to confirm a lawyer in the idea that the main lines of the procedure with which he has been familiar for half a century were ordained by nature and, beyond a few cautious changes in details, must not be questioned, or they may make him conscious of the magnitude of the task confronting the lawyer of to-day on whom rests the chief responsibility for making the legal administration of justice an effective instrument of social engineering. Mr. Works, a soldier in the Civil War, practitioner in Indiana and in California, author of two well-known legal texts, sometime Justice of the Supreme Court of California and United States Senator, writes from abundant and varied experience and with first-hand knowledge of the defects in American judicial organization and procedure of which he speaks. Hence his pronouncement that we have too many courts (p. 25) and that the intermediate appellate courts now so common in this country are a "blunder" (p. 26), his approval of committing regulation of procedure to rules of court rather than to legislation (p. 43, also chap. 14), his argument for abolishing the demurrer (chap. 5), and his preference for an appointive bench (p. 128), add weight to opinions now general among thinking lawyers.

But Mr. Works does more than approve of these things which have come to be commonplaces in programs of law reform. On occasion he shows himself a bold, independent thinker, as, for example, in his comments on the practical impossibility of the statement of facts constituting a cause of action or defense such as the codes of procedure contemplated (p. 45), — something which the framers of the federal Equity Rules should have had before them when they penned rule 25, with its call for the "ultimate facts," — in his remarks as to the jury in civil cases (p. 50), his observations as to the attorney general and the federal courts (p. 123), and his views on the subject of appeals (pp. 86–87). The last two deserve notice. Sir John Hollams in 1906 — thinking, perhaps, of a situation in which the decision of a county judge was reviewable by a divisional court, which was reviewable by the Court of Appeal, which was reviewable by the House of Lords — wrote that, as he believed, "A majority of suitors would prefer a system without appeal" (Jottings of an Old Solicitor, 161). For many cases the elaborate series of appeals is now abridged in England. But three hearings are still possible and common. Mr. Works, familiar with a system where two appeals are permissible and common, is also willing to abolish appeals. Perhaps a better course would be to provide for but one appeal and greatly to simplify appellate procedure, treating an appeal as a motion for a rehearing or new trial, or for vacation or modification of the order or judgment complained of, before another tribunal. It is significant, however, that two experienced and orthodox common-law lawyers should come independently

to the conclusion that the law ought not to be settled for the benefit of the commonwealth by subjecting private litigants to a system of repeated and elaborate judicial reviews. As to the other point, Mr. Works argues convincingly the impropriety of subjecting federal courts and the conduct of business in those courts to the scrutiny and even control of one who practices as counsel for one of the chief litigants therein. In an address before the conference of the Bar-Association Delegates at Saratoga in 1917 I ventured to say: "It is doubtless enough for the Attorney General, who is the counsel of the state in its capacity of a juridical person, owning property, a creditor of some, a debtor to others, and sometimes a tortfeasor, to conduct the state's litigation and have charge of enforcement in the courts of the laws guarding public and social interests. For these purposes an advocate is required. Another type of lawyer should be minister of justice." Mr. Works reinforces this point by showing how the advocate for one of the litigants is able to influence the tribunal so that what would be legitimate in a Ministry of Justice runs counter to the traditions and policy of common-law judicial administration as our department of justice is actually constituted.

Long experience before elective courts in Indiana and in California has made Mr. Works an exceptionally competent witness. Hence what he says as to the abuses in impaneling juries in many states and the cause thereof (p. 50), of the causes of long and unprofitable cross-examinations (p. 54), of the relation between long trials and weak judges (p. 54), of the causes of the bad habits that have grown up in the trial of causes in so many state courts (p. 55), of lack of judicial courage as a cause of long holding of causes under advisement (p. 58), and of the relation between weak judges and the "state of the authorities" (p. 62), deserves to be read and pondered wherever the bench is elective. Even more are these things true where, as is now general, judges are chosen by a direct primary. Desire of sitting judges to "make a record" leads to the abuse of written opinions in the trial courts (pp. 67–68) and to unseemly displays for the edification of newspaper reporters. But, what is much worse, judges soon learn that the great point under such a system is not to offend any one, and this leads, for example, to laxity as to continuances (p. 47), and to toleration of many other time-consuming and expensive practices. Especially noteworthy are the remarks as to recent methods of canvassing for judicial office and judicial candidacy for political office (pp. 108–110).

Where so much that is good is put in such small compass, one hesitates to criticize. But it is to be regretted that Mr. Works did not give more effectiveness to his experience and reflection by looking into the modern literature of procedural reform more thoroughly. He says nothing about an administrative head of the judicial system, he does not notice the distinction between issue-pleading and notice-pleading, and so does not see how and why code pleading fell between them, and for English practice he appears to rely on Foulkes's Action in the Supreme Court (3 ed., 1884) and so is not aware of the great improvements made after 1890. Also, although he makes a good point with reference to the separate teaching of common-law pleading and code pleading (p. 20), he is not aware that James Barr Ames long ago compiled a book for students on the very lines he recommends. Perhaps we should not complain that he conceives the distinction between law and equity to inhere in the nature of things and to be beyond legislative reach (p. 19). For such views, and those with respect to the logical character of common-law pleading (p. 11) and the fixed and unchanging character of the common law as compared with the civil law (pp. 13–14), serve to prove to us that we are reading the book of a thoroughgoing common-law lawyer, and not the pronouncements of a (presumably) heterodox and impractical professor.

"Juridical Reform" deserves wide circulation and careful reading in and out of the profession.

ROSCOE POUND.